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HONOLULU, HAWAII

Agency: City Council of the City and County of Honolulu
Hearing Date/Time: Wednesday, September 22, 2010, 2:00 p.m.
Place: Council Chamber
Re: Testimony of the ACLU of Hawaii in Opposition to City & County of Honolulu Bill No. 39 FD1 Relating to the regulation of sidewalks

Dear Chair Apo, Vice Chair Garcia, and Members of the City Council:

The American Civil Liberties Union of Hawaii (ACLU of Hawaii) stands in opposition to Bill 39 FD1, which regulates sidewalk usage by creating a “pedestrian use zone.” This Bill is vague and overbroad, as it improperly interferes with protected First Amendment activities.

Sidewalks, like streets and parks, “have immemorially been held in trust for the use of the public, and time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Hague v. CIO*, 307 U.S. 496, 515 (1939). Any regulation of the City’s sidewalks, therefore, must be narrowly tailored to serve a significant government interest and must not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). Because Bill 39 applies to *all* sidewalks on Oahu at *all* times – regardless of how wide or how busy the sidewalk happens to be¹ – it is an improper restriction on First Amendment rights.

In *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 799 (9th Cir. 2006), the Ninth Circuit Court of Appeals struck down a Las Vegas ordinance in which the government sought to ban all folding tables from a downtown pedestrian area. The court held that “the erection of tables in a public forum is expressive activity protected by our Constitution to the extent that the tables facilitate the dissemination of First Amendment speech. . . . To the extent [the Las Vegas ordinance] prohibits erecting tables that are used to facilitate the dissemination of protected speech, it is an infringement of First Amendment rights.” Although Bill 39 allows for folding tables, it purports to limit every single other kind of item that could likewise be “used to facilitate the dissemination of protected speech.” For example, the bill prohibits soap boxes (or milk crates or any other item to allow a speaker to stand slightly above a crowd), easels (to allow a

¹ Many sidewalks on Oahu offer less than eight feet of frontage between the private property line and the roadway; similarly, many (if not most) sidewalks on Oahu see a minimum of pedestrian traffic, severely undercutting any governmental justification for banning all items other than “personal baggage and luggage” (yet another vague phrase in the Bill).

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speaker to display artwork or other visual materials), chairs, musical instruments, and a variety of other items used regularly by those engaged in free speech activities on Oahu. By including a narrow exception for tables – but not other similar items – the City and County of Honolulu will be subject to numerous constitutional (as-applied) challenges.

In sum, the ACLU respectfully requests that the Council defer this measure.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,



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